

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

KAETHE G. JOHNSON,

Plaintiff,

v.

WASHINGTON NATIONAL  
INSURANCE COMPANY,

Defendant.

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C.A. No. 1:17-cv-445

**WASHINGTON NATIONAL INSURANCE COMPANY'S  
INDEX OF STATE COURT MATTERS**

	<b>State Court Document</b>	<b>Date Filed</b>
1.	Travis County Docket Sheet	N/A
2.	Citation	04/17/2017
3.	Plaintiff's Original Petition & Request for Disclosure (as served on Washington National Insurance Company)	04/17/2017
4.	Executed Service	04/24/2017

Dated: May 12, 2017

Respectfully submitted,

By: s/ Nicole H. Muñoz

Andrew G. Jubinsky  
Texas Bar No. 11043000  
[andy.jubinsky@figdav.com](mailto:andy.jubinsky@figdav.com)  
Nicole H. Muñoz  
State Bar No. 24098153  
[nicole.munoz@figdav.com](mailto:nicole.munoz@figdav.com)

**FIGARI & DAVENPORT, L.L.P.**

3400 Bank of America Plaza  
901 Main Street  
Dallas, Texas 75202  
Telephone: (214) 939-2000  
Facsimile: (214) 939-2090

ATTORNEYS FOR WASHINGTON NATIONAL  
INSURANCE COMPANY

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been served on the parties listed below on May 12, 2017:

Matthew J. Riley  
John P. Cowart  
SHAW COWART, LLP  
1609 Shoal Creek Boulevard  
Suite 100  
Austin, TX 78701

ATTORNEYS FOR PLAINTIFF

s/ Nicole H. Muñoz

Nicole H. Muñoz



( / )

## DISTRICT CLERK

[About \(/district-clerk/about\)](/district-clerk/about)
[Online Case Information \(/district-clerk/online-case-information\)](/district-clerk/online-case-information)
[Online Payment \(/district-clerk/online-payments\)](/district-clerk/online-payments)
[Jury Duty \(/district-clerk/jury-duty\)](/district-clerk/jury-duty)
[Information & Resources \(/district-clerk/resources\)](/district-clerk/resources)
[Passport Information \(/district-clerk/passport\)](/district-clerk/passport)
[Attorney Access to Records Online \(/district-clerk/public-access\)](/district-clerk/public-access)
[E-Filing \(/district-clerk/efiling\)](/district-clerk/efiling)
[Contact Information \(/district-clerk/contact\)](/district-clerk/contact)

## IN THE NEWS


[\(/district-clerk/online-case-information\)](/district-clerk/online-case-information)
[Online Case Information \(/district-clerk/online-case-information\)](/district-clerk/online-case-information)

[\(/district-clerk/online-payments\)](/district-clerk/online-payments)
You are here: [Home \(/\)](#) ▶ [District Clerk \(/district-clerk\)](/district-clerk) ▶ [Online Case Information](#)

## Online Case Information

### Details

Updated : Wednesday, May 10, 2017 5:14:20 AM

[New Search \(/OnlineCaseInformationWeb/\)](#)
[Request Documents \(/OnlineCaseInformationWeb/Content/record\\_search\\_fillable.pdf\)](/OnlineCaseInformationWeb/Content/record_search_fillable.pdf)

<b>Cause Number</b>	D-1-GN-17-001688
<b>Case Status</b>	PENDING
<b>Style</b>	JOHNSON V WASHINGTON NATIONAL
<b>Filed Date</b>	4/17/2017
<b>Hearing Date</b>	--

Attorney	Type	Full/Business Name	First Name	Middl
	DEFENDANT	WASHINGTON NATIONAL INSURANCE COMPANY		
RILEY MATTHEW JOSEPH	PLAINTIFF		KAETHE	G

Event Date	Party Type	Description
4/24/2017	DF	EXECUTED SERVICE
4/17/2017	DF	ISS:CITATION
4/17/2017	PL	ORIGINAL PETITION/APPLICATION

[New Search \(/OnlineCaseInformationWeb/\)](#)

EXHIBIT A

C I T A T I O N  
THE STATE OF TEXAS  
CAUSE NO. D-1-GN-17-001688

DELIVERED  
4/21/17  
By: M. T. Escalante  
Austin Process, LLC

KAETHE G. JOHNSON

, Plaintiff

vs.

WASHINGTON NATIONAL INSURANCE COMPANY

, Defendant

TO: WASHINGTON NATIONAL INSURANCE COMPANY  
BY SERVING ITS REGISTERED AGENT, CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, STE. 620  
AUSTIN, TEXAS 78701-3218

Defendant, in the above styled and numbered cause:

**YOU HAVE BEEN SUED.** You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE of the PLAINTIFF in the above styled and numbered cause, which was filed on APRIL 17, 2017 in the 250TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, April 17, 2017.

REQUESTED BY:  
MATTHEW J. RILEY  
1609 SHOAL CREEK BLVD., STE. 100  
AUSTIN, TX 78701  
BUSINESS PHONE: (512) 499-8900 FAX: (512) 320-8906



*[Signature]*  
Velva L. Price  
Travis County District Clerk  
Travis County Courthouse  
1000 Guadalupe, P.O. Box 679003 (78767)  
Austin, TX 78701

PREPARED BY: CARRISA ESCALANTE

--- -- -- -- -- R E T U R N --- -- -- -- --

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and executed at \_\_\_\_\_ within the County of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., by delivering to the within named \_\_\_\_\_, each in person, a true copy of this citation together with the PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ \_\_\_\_\_

\_\_\_\_\_  
Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Printed Name of Server\_\_\_\_\_  
Notary Public, THE STATE OF TEXAS\_\_\_\_\_  
County, Texas

D-1-GN-17-001688

SERVICE FEE NOT PAID

P01 - 000050726

☐ Original☐ Service Copy

EXHIBIT A

4/17/2017 3:28:55 PM

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-17-001688  
Carrisa Escalante

CAUSE NO. **D-1-GN-17-001688**

**KAETHE G. JOHNSON**  
Plaintiff

VS.

**WASHINGTON NATIONAL  
INSURANCE COMPANY**  
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

**250TH JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

Plaintiff, Kaethe G. Johnson, files this original petition against Defendant, Washington National Insurance Company ("Washington National"), and alleges as follows:

**DISCOVERY-CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3 of Rule 190 of the Texas Rules of Civil Procedure and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief over \$100,000. Therefore, Plaintiff will ask the court to order that discovery be conducted in accordance with a discovery control plan tailored to the particular circumstances of this suit.

**CLAIM FOR RELIEF**

2. Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000.

**PARTIES**

3. Plaintiff, Kaethe G. Johnson, is an individual residing in Travis County, Texas.

4. Defendant, Washington National Insurance Company, is an insurance company organized under the laws of the State of Indiana, and authorized to engage in the insurance business in Texas. Defendant may be served with process by serving its Registered Agent, Corporation Service Company, 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

## VENUE

5. Venue is proper in Travis County under Texas Civil Practice & Remedies Code section 15.002 because all or a substantial part of the events or omissions giving rise to the claim occurred in Travis County, Texas.

## FACTS

6. On February 21, 2002, Plaintiff Kaethe Johnson entered into a long-term care insurance policy with Defendant Washington National Insurance Company. In September of 2016, while Plaintiff was receiving long-term care benefits under the terms of the contract, Defendant suddenly denied coverage. Somewhat surprisingly, the stated reason for denying coverage goes back to a late payment from over three (3) years earlier, when Plaintiff was late on one payment. However, that issue was corrected back in 2013, shortly after it happened. Defendant's attempts to bring this late payment up now, over three years later – are disappointing and inconsistent with the policy and the actions and representations of the Defendant.

7. The first page of the insurance contract at issue plainly states, "This policy is guaranteed renewable for your lifetime. We cannot cancel this Policy as long as you pay the premiums, and you have not exhausted your Benefit Account Value." Plaintiff has paid her premiums, and has not exhausted her Benefit Account Value. She is, therefore, entitled to benefits.

8. From March 27, 2016, to April 20, 2016, Plaintiff went three weeks without continuous care, as she moved to a new city and sought out a new care provider. During this time, no bills or invoices were sent to Plaintiff and no demand for premium payment was made.

9. Plaintiff was back into a continuous care condition by April 20, 2016. Per the policy, Plaintiff does not owe premiums while under continuous care and receiving claim benefits. Further, the policy states on page 12 that "when a claim is paid, any premium due and unpaid

may be deducted from the claim payment.” Thus, if Plaintiff did owe a premium payment for the three weeks she went without care, that premium should have just been deducted from the next claim payment. There, again, is no justification for canceling the policy.

10. Additionally, the policy calls for a 65-day grace period for late premium payments, and requires that Defendant provide written notice of imminent lapse, at least 30 days before the policy lapses. Defendant did not do this and is therefore in breach of the contract.

### **CAUSES OF ACTION**

#### **COUNT 1 – NEGLIGENCE**

11. Defendant had a duty to comply with its contractual terms with regard to written notice, lapse, grace periods, and cancellation of the contract.

12. Defendant breached that duty by failing to keep Plaintiff informed, failing to provide written notice, and attempting to cancel the contract in a manner inconsistent with the contract.

13. Defendant’s breach was the proximate cause of Plaintiff’s damages, which include loss of policy proceeds and emotional stress and mental anguish.

#### **COUNT 2 – BREACH OF CONTRACT**

14. The insurance policy constituted a contract between the parties that represented the terms and conditions under which each party was to perform. Defendant breached the contract by not paying Plaintiff’s claim as beneficiary despite the fact that all premiums were paid and all of Plaintiff’s contractual obligations had been complied with. As a direct and proximate result of Defendant’s contractual breach, Plaintiff has suffered damages within the jurisdictional limits of this Court.

**COUNT 3 – BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING:  
BANNER LIFE**

15. Defendant's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to insured parties in insurance contracts.

16. Defendant had a duty to deal fairly and in good faith with Plaintiff in processing and determining her claim. Defendant breached this duty by refusing to properly investigate the claim and by wrongfully denying Plaintiff's claim as a beneficiary of insurance proceeds. Defendant knew or should have known there was no reasonable basis for denying the claim. As a proximate result of Defendant's breach of these legal duties, Plaintiff has suffered economic damages and damages for loss of benefits under the policy within the jurisdictional limits of this Court. Additionally, Plaintiff suffered injury independent of the loss of policy benefits, and that injury resulted from Defendant's gross negligence, malice, or actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

**COUNT 4 – VIOLATION OF TEXAS INSURANCE CODE § 541.060 AND §541.061**

17. Plaintiff is a person as defined by Texas Insurance Code § 541.002(2).

18. Defendant is a person as defined by Texas Insurance Code § 541.002(2).

19. Defendant engaged in acts or practices that violated;

(A) Texas Insurance Code Chapter 541, subchapter B; and

(B) Texas Business & Commerce Code § 17.46(b), and the Plaintiff relied on the acts or practices to her detriment.

20. Defendant's acts or practices were a producing cause of actual damages to Plaintiff.

21. Defendant misrepresented the terms of the insurance policy by making an untrue statement of material fact, in violation of Texas Insurance Code § 541.060(a)(1).



22. Defendant misrepresented the terms of the insurance policy by making an untrue statement of material fact, in violation of Texas Insurance Code § 541.061(1).

23. Defendant misrepresented the terms of the insurance policy by failing to state a material fact that is necessary to make other statements made not misleading, in violation of Texas Insurance Code § 541.061(2).

24. Defendant misrepresented the terms of the insurance policy by making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of material fact, in violation of Texas Insurance Code § 541.061(3).

25. Defendant knowingly committed the foregoing acts, with actual knowledge of the falsity, unfairness, or deception of the foregoing acts and practices in violation of Texas Insurance Code § 541.002(1). Defendant's violations of the Texas Insurance Code were a producing and/or proximate cause of Plaintiff's legal damages, including economic damages, and additional damages allowed by law.

#### **COUNT 5 – VIOLATION OF THE DECEPTIVE TRADE PRACTICES ACT**

26. Plaintiff is a consumer under the DTPA.

27. Defendant is an insurance company engaged in the business of insurance and can be sued under the DTPA.

28. Defendant violated the DTPA when Defendant used or employed acts or practices in violation of Texas Insurance Code Chapter 541 and Texas Business & Commerce Code § 17.46(b)(5), (7) and (14). Defendant's violations of the Deceptive Trade Practices Act were a producing and/or proximate cause of Plaintiff's damages, including economic damages, and additional damages as allowed by law.

**COUNT 6 – VIOLATIONS OF TEXAS INSURANCE CODE CHAPTER 542  
("PROMPT PAYMENT OF CLAIMS ACT")**

29. Plaintiff had a claim under an insurance policy.
30. Plaintiff gave proper notice of its claim to the insurer, Defendant herein.
31. Defendant is liable for the claim.
32. Defendant violated Chapter 542 of the Texas Insurance Code by not timely:
  - (A) acknowledging, investigating, or requesting information about the claim;
  - (B) accepting, rejecting, or extending time to decide the claim; and
  - (C) paying the claim.
33. Defendant failed to properly investigate Plaintiff's claim by the time period required under the Act and then wrongfully rejected Plaintiff's claim. By failing to pay a valid claim within sixty (60) days of receiving all items requested from Plaintiff, Defendant is liable to Plaintiff for the original claims. Pursuant to Chapter 542.060 of the Texas Insurance Code, Plaintiff is further entitled to recover statutory damages on the amount that should have been paid under the original claim in the amount of 18% of the full amount awarded to Plaintiff at the trial of this case.

**COUNT 7 – FRAUD**

34. Defendant is liable to Plaintiff for common law fraud.
35. Defendant represented to Plaintiff that Plaintiff had a valid and active insurance policy and contract. The statements were made with the intention that they should be acted upon by Plaintiff, who in turn acted in reliance upon the statements, thereby causing Plaintiff to suffer injury and constituting common law fraud.
36. Each of the representations concerned material facts, which Defendant knew was false or made recklessly without any knowledge of the truth as a positive assertion.

### **DAMAGES**

37. Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the producing causes of the damages sustained by Plaintiff.

38. For negligence, Plaintiff is entitled to actual damages for the loss of policy proceeds and damages for emotional stress and mental anguish.

39. For breach of contract, Plaintiff is entitled to regain the benefit of the bargain, which is the amount of her claim, together with attorney fees.

40. For breach of duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from the insurer's breach of duty, such as additional costs, economic hardship, losses due to nonpayment of the amount the insurer owed, exemplary damages and damages for emotional distress. Additionally, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from Defendant's conduct.

41. For noncompliance with the Texas Insurance Code Chapter 541, Plaintiff is entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the policy, mental anguish, court costs and attorney's fees. For knowing conduct of the acts complained of, Plaintiff requests three times her actual damages. Texas Insurance Code § 541.152.

42. For violation of the DTPA, Plaintiff is entitled to economic damages, and, mental anguish damages, court costs and attorney's fees. Plaintiff requests three times her actual damages. Texas Insurance Code § 541.152 and Texas Business & Commerce Code § 17.50.

43. For noncompliance with Texas Insurance Code Chapter 542, Prompt Payment of Claims, Plaintiff is entitled to the amount of her claim, as well as eighteen (18) percent interest per

annum of the amount of such claim as damages, together with attorney's fees. Texas Insurance Code § 542.060(a).

44. For fraud, Plaintiff is entitled to recover actual damages and exemplary damages for knowing fraudulent and malicious representations, along with attorney's fees, interest and court costs.

#### **KNOWLEDGE**

45. Each of the acts described above, together and singularly, was done "knowingly" as that term is used in the Texas Insurance Code § 541.002(1) and was a producing cause of Plaintiff's damages described herein.

#### **ATTORNEY'S FEES**

46. Defendant's conduct, as described in this Petition, has necessitated the employment by Plaintiff of the undersigned attorney. Plaintiff is entitled to recover a reasonable sum for the necessary services of Plaintiff's attorney in the preparation of trial of this action, including any appeals to the Court of Appeals or the Texas Supreme Court.

#### **JURY DEMAND**

47. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

#### **REQUEST FOR DISCLOSURE**

48. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

#### **PRAYER**

49. For these reasons, Plaintiff asks that the Court issue citation for Defendant to appear and answer, and that Plaintiff be awarded a judgment against Defendant for the following:

- a. Actual damages.

- b. Treble damages.
- c. Exemplary damages.
- d. Prejudgment and postjudgment interest.
- e. Court costs.
- f. Attorney fees.
- g. All other relief to which Plaintiff is entitled.

Respectfully submitted,

SHAW COWART, LLP

/s/ Matthew J. Riley

MATTHEW J. RILEY

Texas Bar No. 24070500

mriley@shawcowart.com

JOHN P. COWART

Texas Bar No. 04919500

jcowart@shawcowart.com

1609 Shoal Creek Blvd., Ste. 100

Austin, Texas 78701

T: 512.499.8900 / F: 512.320.8906

ATTORNEYS FOR PLAINTIFF

Plaintiff respectfully requests a trial by jury.

**THE LAWYER REFERRAL SERVICE OF CENTRAL TEXAS**  
A Non-Profit Corporation

**IF YOU NEED A LAWYER  
AND DON'T KNOW ONE,  
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CAN HELP**

**512-472-8303**  
**866-303-8303 (toll free)**  
**[www.AustinLRS.com](http://www.AustinLRS.com)**

**Weekdays 8:00 am to 4:30 pm**  
**\$20.00 for first half hour attorney consultation**  
**(free consultations for personal injury, malpractice, worker's compensation,**  
**bankruptcy, and social security disability)**

**This service is certified as a lawyer referral service as required by the State of Texas**  
**under Chapter 952, Occupations Code. Certificate No. 9303**

**SI USTED NECESITA EL CONSEJO DE UN  
ABOGADO Y NO CONOCE A NINGUNO  
PUEDE LLAMAR  
A LA REFERENCIA DE ABOGADOS**

**512-472-8303**  
**866-303-8303 (llame gratis)**  
**[www.AustinLRS.com](http://www.AustinLRS.com)**

**Abierto de lunes a viernes de 8:00 am-4:30 pm**  
**\$20.00 por la primera media hora de consulta con un abogado**  
**(la consulta es gratis si se trata de daño personal, negligencia,**  
**indemnización al trabajador, bancarrota o por incapacidad del Seguro Social)**

**This service is certified as a lawyer referral service as required by the State of Texas**  
**under Chapter 952, Occupations Code. Certificate No. 9303**

Filed in The District Court  
of Travis County, TexasCITATION  
THE STATE OF TEXAS  
CAUSE NO. D-1-GN-17-001688APR 24 2017 NNR  
At 1:30 P.M.  
Velva L. Price, District Clerk

KAETHE G. JOHNSON

, Plaintiff

vs.

WASHINGTON NATIONAL INSURANCE COMPANY

, Defendant

TO: WASHINGTON NATIONAL INSURANCE COMPANY  
BY SERVING ITS REGISTERED AGENT, CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, STE. 620  
AUSTIN, TEXAS 78701-3218

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE of the PLAINTIFF in the above styled and numbered cause, which was filed on APRIL 17, 2017 in the 250TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, April 17, 2017.REQUESTED BY:  
MATTHEW J. RILEY  
1609 SHOAL CREEK BLVD., STE. 100  
AUSTIN, TX 78701  
BUSINESS PHONE: (512) 499-8900 FAX: (512) 320-8906Velva L. Price  
Travis County District Clerk  
Travis County Courthouse  
1000 Guadalupe, P.O. Box 679003 (78767)  
Austin, TX 78701

PREPARED BY: CARRISA ESCALANTE

## RETURN

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and  
executed at \_\_\_\_\_ within the County of \_\_\_\_\_  
\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M.,  
by delivering to the within named \_\_\_\_\_, each  
in person, a true copy of this citation together with the PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ \_\_\_\_\_

\_\_\_\_\_  
Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Server

SERVICE RETURN ATTACHED

\_\_\_\_\_  
Notary Public, THE STATE OF TEXASAUSTIN PROCESS, LLC County, Texas  
809 NUECES  
AUSTIN, TX 78701

D-1-GN-17-001688

SERVICE FEE NOT PAID

P01 - 000050726

☐ Original☐ Service Copy

005156298

EXHIBIT A

**AFFIDAVIT OF SERVICE**

State of Texas

County of Travis

250th Judicial District Court

Case Number: D-1-GN-17-001688

Plaintiff:

**Kaethe G Johnson**

vs.

Defendant:

**Washington National Insurance Company**

For:

Shaw Cowart, LLP

1609 Shoal Creek

Ste. 100

Austin, TX 78701

Received by Austin Process LLC on the 20th day of April, 2017 at 3:50 pm to be served on **Washington National Insurance Company** by serving its registered agent, **Corporation Service Company, 211 E 7th St, Ste 620, Austin, Travis County, TX 78701.**

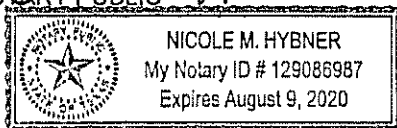
I, Mike Techow, being duly sworn, depose and say that on the **21st day of April, 2017 at 3:30 pm, I:**

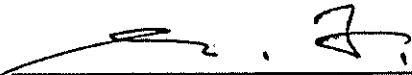
delivered to **REGISTERED AGENT** by delivering a true copy of the **Citation and Plaintiff's Original Petition and Request for Disclosure** with the date of service endorsed thereon by me, to: **Sue Vertrees, Corporation Service Company as Authorized Agent** at the address of: **211 E.7th Street, Ste. 620, Austin, Travis County, TX 78701** on behalf of **Washington National Insurance Company**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, of sound mind, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was delivered. The facts stated in this affidavit are within my personal knowledge and are true and correct.

Subscribed and Sworn to before me on the 21st day of April, 2017 by the affiant who is personally known to me.

NOTARY PUBLIC



  
Mike Techow  
SCH-1215, Exp. 7/31/17

Austin Process LLC  
809 Nueces  
Austin, TX 78701  
(512) 480-8071

Our Job Serial Number: MST-2017003412  
Ref: Johnson v Washington National Insurance



UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

KAETHE G. JOHNSON,

Plaintiff,

v.

WASHINGTON NATIONAL  
INSURANCE COMPANY,

Defendant.

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C.A. No. \_\_\_\_\_

***AFFIDAVIT OF KIMBERLY MARTIN***

**KIMBERLY MARTIN** (“Affiant”), being first duly sworn upon her oath, deposes and states:

1. Affiant is an adult fully competent to testify and makes this Affidavit on personal knowledge.
2. Affiant is the Supervisor, Business Integrity Unit, for CNO Services, LLC in Chicago, Illinois.
3. In such capacity, Affiant performs services for Washington National Insurance Company (“Washington National”) related to its insurance operations, and she is familiar with Washington National’s insurance policies, administration of insurance policies, and business and record-keeping practices.
4. On or about April 16, 2002, a predecessor of Washington National issued Federal Qualified Long Term Care Insurance Policy, number \*\*\*\*\*2611 (the “Policy”), to Kaethe G. Johnson (“Plaintiff”).

**EXHIBIT B**

5. On the Application for the Policy signed by Plaintiff on March 11, 2002 (the "Application"), San Antonio, Bexar County, Texas, are listed as the City, County and State of Plaintiff's address. A true and accurate copy of the Application is attached hereto as Exhibit 1<sup>1</sup>.

Further Affiant sayeth naught.

**I AFFIRM UNDER PENALTIES FOR PERJURY THAT THE FOREGOING IS TRUE TO THE BEST OF MY KNOWLEDGE.**

Date: May 5, 2017

Kimberly Martin  
KIMBERLY MARTIN

STATE OF ILLINOIS     )  
                                      )     SS:  
COUNTY OF COOK     )

Before me, a Notary Public in and for said County and State appeared Kimberly Martin this \_\_\_\_ day of May, 2017, as the duly authorized representative of Washington National Insurance Company, who, being first duly sworn upon her oath, acknowledged the signature on the above and foregoing *Affidavit of Kimberly Martin* to be her free and voluntary act and that the statements therein are true to the best of her knowledge.

My Commission Expires:

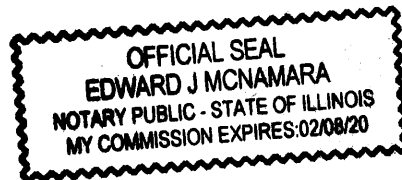
2/8/20

Edward J. McNamara  
Notary Public

Printed Name: EDWARD J. MCNAMARA

My County of Residence:

KANE



<sup>1</sup> Exhibit 1 is redacted for HIPAA and privacy reasons.

# **EXHIBIT 1**



CONSECO.

Application for Insurance to Conseco Health Insurance Company, Phoenix, Arizona  
 Administrative Office: 11815 N. Pennsylvania Street, Carmel, IN 46032 Phone No. 1-800-541-2254

ADMIN USE ONLY	POLICY NUMBER	EFFECTIVE DATE	WRITING AGENT	AGENCY #				
<input checked="" type="checkbox"/> New Application for coverage <input type="checkbox"/> Changes to existing coverage - Policy # _____ <input type="checkbox"/> Reinstatement								
<b>PART I</b>								
Policy Form	Daily Benefit	Benefit Factor	Elimination Period	HHC				
<input checked="" type="checkbox"/> LTC <input type="checkbox"/> NH	\$ <u>100.00</u> min -\$50 max -\$250 Requested Eff Date _____	_____ 365 days <input checked="" type="checkbox"/> 1460 days _____ 730 days    _____ 1825 days _____ 1095 days    _____ Life	<input checked="" type="checkbox"/> 20 days    _____ 180 days _____ 60 days    _____ 365 days _____ 100 days	_____ 50% _____ 75% <input checked="" type="checkbox"/> 100%				
Optional Refund of Premium Riders:		Optional Benefit Increase Riders:		Other Optional Riders				
<input type="checkbox"/> ROP - Survivor* <input type="checkbox"/> ROP - Standard* <input type="checkbox"/> ROP - Graded*		<input type="checkbox"/> 5% Compound Lifetime <input type="checkbox"/> 5% Compound 10-year <input type="checkbox"/> 5% Simple Lifetime <input type="checkbox"/> 5% Simple 10-year		<input type="checkbox"/> Helping Hands Benefit (LTC only) <input type="checkbox"/> Non-Forfeiture Benefit* <input type="checkbox"/> Restoration of Benefits <input type="checkbox"/> Spousal Shared Benefit <input type="checkbox"/> 5 Year Survivorship Benefit				
*Note: the Refund of Premium rider and the Non-Forfeiture rider may not be selected together Does Sponsored-Group Discount apply? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, list group name _____								
Estimated Premium		Discounts	Amount Collected	Companion Application				
Annual \$ <u>3580</u> Mode Selected <u>Quarterly</u> Modal Premium \$ <u>895.00</u>		Check One <input type="checkbox"/> Standard Spousal (10%) <input type="checkbox"/> Multi-Insured (10%) <input type="checkbox"/> Multi-Insured Spousal (20%) <input type="checkbox"/> None	\$ <u>895.00</u>	Name _____ SSN _____				
<b>PART II</b>								
Applicants Name Last		First	MI	Height	Weight	Sex	Birthdate	Age Last
JOHNSON		Kaethe	G	5'5	210	F	Mo Day Yr	Birthday
Address		City	County	State & Zip Code				
[REDACTED]		San Antonio	Bexar	Texas 78247				
Billing Address (If Different)						E-mail Address		
Day Telephone Number		Best Time to call		Social Security Number				
[REDACTED]		anytime		[REDACTED]				
Evening Number		Best Time to call		Marital Status				
[REDACTED]		anytime		<input type="checkbox"/> Married <input checked="" type="checkbox"/> Single <input type="checkbox"/> Other				
Occupation (if retired, former Occupation)						Date Retired		
Retired Housewife								
With whom do you live?		Relationship		Length of time residing together				

RECEIVED

MAR 21 2002

NEW BUSINESS

EXHIBIT B -1

**PART III****Election/Rejection of Inflation Protection and Non-Forfeiture Benefits:**

I have reviewed the outline of coverage and the graph that compares the benefits and premiums of the Policy with and without inflation protection. I realize that based on current health care cost trends, the benefits provided by a long term care plan which does not have meaningful inflation protection may be significantly diminished in terms of real value to me, depending on the amount of time which elapses between the date I purchase the policy and the date on which I first become eligible to use them.

Specifically, I have reviewed Conseco Health's long term care plan.

☒ I reject inflation protection (Optional Benefit Increase Rider)

I have reviewed the outline of coverage and the explanation of the nonforfeiture benefit.

☒ I reject the nonforfeiture benefit (Optional Non-Forfeiture Rider)

**Election of Beneficiary:**

Beneficiary James L Johnson Relationship ex-husband

**Protection Against Unintended Lapse:** I understand that I have the right to designate at least one person other than myself to receive notice of cancellation of this policy for nonpayment of premiums. I understand that notice to my designee (which I can change at any time) will not be given until 30 days after a premium is due and unpaid.

☐ I elect NOT to designate a person to receive such notice.

☒ I elect to designate the following person to receive such notice:  
Name James L Johnson Address [REDACTED] Relationship ex-husband

**PART IV**

San Marcos, TX 78666

- 1 Do you have another Long Term Care, Nursing Home, or Home Health Care insurance policy or group certificate in force now or within the past 12 months?  
If so, with which Company? \_\_\_\_\_  
If that policy lapsed, when did it lapse? \_\_\_\_\_
- 2 Do you intend to replace any current medical or health insurance coverage with this policy?
- 3 If "YES" to 2 above, have you received the required replacement form?
- 4 Are you currently being covered by a state assistance program (Medicaid)?

**PART V**

- 1 Have you been medically treated or diagnosed for any of the following conditions: Alzheimer's disease, dementia or senility, Parkinson's disease, or any brain disease or disorder?
- 2 Have you been medically treated or diagnosed with kidney disease requiring dialysis, Cirrhosis of the liver, Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) or AIDS Related Complex (ARC)?
- 3 Have you been medically treated or diagnosed with multiple sclerosis, paraplegia or quadriplegia, amputations due to a medical condition?
- 4 Within the past 12 months, have you received Home Health Care, used an Adult Day Care Facility, been confined or advised to enter a Nursing Home, Assisted Living Facility, or any other similar facility?
- 5 Do you require assistance or supervision or are you limited, in any way, in performing any of the following activities: eating, dressing, bathing, toileting, transferring to or from a bed or chair, walking, or do you use a wheelchair or walker, or are you bedridden?
- 6 Do you use any medical appliance such as a catheter, oxygen equipment, respirator, or a dialysis machine?
- 7 Due to any present or past mental or physical disability, is any person or institution currently authorized to act on your behalf?

If you answered "Yes" to any question in Part V, you are not eligible for coverage. Do not submit this application.

**PART VI**

For questions 1 through 4, during the past **5 years** have you been diagnosed or treated by a, Neuro-Psychologist, Pa, Health Care Practitioner or any other member of the medical profession for any of the following conditions?

**1 Cardiovascular/Circulatory**

- a Atrial Fibrillation
- b Chest Pain or Angina
- c Congestive Heart Failure
- d Cardiomyopathy
- e Blood or Bone Marrow Disorder
- f High Blood Pressure
- g Heart Disease or Heart Surgery
- h Vascular or Blood Vessel Disease
- i Stroke or Transient Ischemic Attack
- j Circulatory Disorder, Claudication or Peripheral Vascular Disease

**2. Musculoskeletal**

- a Back or Neck Disorder
- b Bone, Joint or Muscle Disorder
- c Fracture
- d Lupus or other Connective Tissue Disease
- e Osteoporosis
- f Arthritis (any type)
- g Other condition causing crippling or limitation of motion or requires an adaptive device

**3 Mental Nervous**

- a Alcoholism or Substance Abuse
- b Depression or Emotional Disorder
- c Dizziness or Vertigo
- d Nervous System Disorder

**4 Miscellaneous**

- a. Seizure Disorder
- b. Eye, Ear or Throat Disorder
- c Cancer or Tumor
- d Diabetes
- e Disease or Disorder of the Liver
- f Disorder of Kidney or Urinary System
- g Incontinence
- h Emphysema or Chronic Obstructive Pulmonary Disease
- i Respiratory Disorder
- j Amputation
- k Skin Ulcers
- l Surgery other than already indicated

**5 Within the past 3 years, have you**

- a Been medically advised that you will need surgery which has not been performed?
- b Received care in or been advised to enter a nursing care facility, adult day care, hospital, or other health care facility?

Please provide details to all "YES" answered questions in Part VI

Question	Medical Condition	Dates To/From	Treatment	Name/Address/Phone of Health Care Professional
[Redacted]				

**PART VII****1 Within the past 12 months have you.**

- a been evaluated by a medical professional, had tests, x-rays, diagnostic studies for which a diagnosis has not yet been made?
- b sought medical advice or treatment for any of the following situations
  - Deterioration of vision?
  - Unstable Gait or Imbalance?
  - Numbness or Weakness?
  - Tremors?
  - Weight loss of 10 or more pounds?
  - Loss of appetite?
  - Confusion or Disorientation?
  - Fainting?
  - History of Falling?
- c used any of the following
  - Cane?
  - Braces for spine or lower extremities?
  - Physical or Rehabilitative Services?

*W. J. Jones*

- Please provide details to all "YES" answered questions in Part VII

If necessary, use a separate sheet of paper SIGNED AND DATED by the agent and the applicant

**MEDICATIONS.** List any other prescription medication (and dosage) being taken at this time that is not previously listed.

Please list below the Name(s), address and phone number(s) for all medical professionals visited in the past 2 years

b) Name [REDACTED]  
Address [REDACTED]  
City, State [REDACTED]  
Phone Number [REDACTED]  
Condition [REDACTED]

c) Name [REDACTED]  
Address [REDACTED]  
City, State, Zip [REDACTED]  
Phone Number [REDACTED]  
Condition Treated [REDACTED]

d) Name [REDACTED]  
Address [REDACTED]  
City, State, Zip [REDACTED]  
Phone Number [REDACTED]  
Condition Treated [REDACTED]

e) [REDACTED]



**--- AUTHORIZATION ---**

I have read the answers to the above questions before signing this application. I represent that the answers are correctly written as given by me and are true and complete to the best of my knowledge and belief and that I understand any false statement or misrepresentation in the application may result in loss of coverage under the Policy. I acknowledge that I have received from the agent any required Outline of Coverage or Disclosure Form and Buyer's or Shopper's Guide. I will consent to being contacted by a company representative if necessary.

I understand that Conseco Health Insurance Company, an affiliate of the Company, its reinsurers, any insurance support organizations, and those persons authorized to represent them may need to collect information on me/(us) in regard to proposed coverage. Therefore, I authorize any (1) person licensed to provide health care service, (2) hospital, (3) clinic or other medical facility, (4) insurer, (5) reinsurer, (6) insurance support organizations, including MIB (Medical Information Bureau), (7) veterans organization, (8) financial source, and (9) employer, to give the types of information listed below when this Authorization is presented. The types of information will include facts about my (1) mental and physical health, (2) other insurance coverage, (3) hazardous activities, (4) character and other personal traits, (5) general reputation, (6) mode of living, (7) finances, (8) vocation, (9) drug, alcohol, and/or substance abuse, and (10) Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Complex (ARC) or Human Immunodeficiency Virus (HIV). The Company and its reinsurers will use the information in order to determine whether I am insurable. The Company and the insurance agent, producer, or broker may also use the information to help update and improve my insurance program.

Those parties named in this Authorization, excluding insurance support organizations, may disclose the information that they have collected. They may disclose this information to (1) other insurers to which I have applied or may apply for insurance, (2) reinsurers, (3) the Medical Information Bureau, or (4) other persons who perform business, professional, or insurance tasks for them. They may also disclose information according to any contract with a member company or organization. Information may also be disclosed as allowed or required by law.

This Authorization will be valid for 30 months after the date of signing, and may not be revoked during this time. A copy of this Authorization shall be as valid as the original. I understand I have a right to receive a copy of this Authorization. I acknowledge receipt of a copy of the "Notice of Insurance Information Practices," which includes pre-notification information relating to investigative consumer reports and the Medical Information Bureau, Inc. I understand and agree that this policy may include an administrative remedies provision which, if the Company and I both agree, must be exhausted prior to any other action being taken at law or in equity. The provision provides for arbitration, which may be binding, but only if both parties agree, depending on applicable state and federal law.

**CAUTION.** If your answers on this application are incorrect or untrue, the Company may have the right to deny benefits or rescind your policy.

Any person who, knowingly and with intent to defraud an insurance company or other person, files an application for insurance or statement of claim which contains any materially false information or, conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and may subject such person to criminal and civil penalties.

Signed at San Antonio, TX on 3/11/02 Month, Day, Year  
Katherine Johnson City and State  
 Applicant's Signature - Sign legal name in full **MAR 22 2002**

**--- INSURE ONLY ---****PLEASE LIST ALL LIKE COVERAGE IN FORCE:**

Company	Policy #	Type & Amount of Coverage	Effective Date	Currently In Force	Termination Date	(✓) If Being Replaced
				Yes No		
				Yes No		
				Yes No		

Which rates did you quote Preferred or Standard

I have reviewed the current insurance coverage of the applicant and find that additional coverage of the type and amount applied for is appropriate for the needs of the applicant. I certify (a) I have personally seen the applicant, and (b) I have accurately recorded information supplied to me by the applicant at the time the application was made. I further certify that while interviewing the applicant, I fully complied with Conseco Health's "Standards of Ethical Marketing Conduct."

I know nothing about the health history which is not fully set forth in the application.

List other health insurance policies sold by you to the applicant within the past 5 years which are no longer in force.

List other health insurance policies sold by you to the applicant which are still in force.

Shirley R. Perry 3/11/2002  
 Signature of Agent Month/Day/Year Printed Name of Agent Agent Sticker Code License #  
 HIC-6015-TX 6

**EXHIBIT B -1**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

KAETHE G. JOHNSON,

Plaintiff,

v.

WASHINGTON NATIONAL  
INSURANCE COMPANY,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

C.A. No. \_\_\_\_\_

***AFFIDAVIT OF KARL KINDIG***

KARL KINDIG (“Affiant”), being first duly sworn upon his oath, deposes and states:

1. Affiant is an adult fully competent to testify and makes this Affidavit on personal knowledge.

2. Affiant is the Senior Vice President and Secretary of Washington National Insurance Company (“Washington National”) and is authorized to make this Affidavit on its behalf. Affiant is familiar with the business and operations of Washington National.

3. Washington National is an Indiana corporation with its principal place of business in Indiana.

Further your Affiant sayeth naught.

**I AFFIRM UNDER PENALTIES FOR PERJURY THAT THE FOREGOING IS TRUE TO THE BEST OF MY KNOWLEDGE.**

Date: May 4, 2017

Karl W Kindig  
Karl Kindig

STATE OF INDIANA                     )  
  )  
COUNTY OF HAMILTON            )       SS:

Before me, a Notary Public in and for said County and State appeared Karl Kindig this 4<sup>th</sup> day of May, 2017, being first duly sworn upon his oath, acknowledged the signature on the above and foregoing *Affidavit of Karl Kindig* to be his free and voluntary act and that the statements therein are true to the best of his knowledge.

My Commission Expires:

May 1, 2024

Rita R. Mennen  
Notary Public

Printed Name: Rita L. Mennen

My County of Residence:

Clinton

